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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JACK GECHTER, Plaintiff and Appellant, v. CITY OF CHULA VISTA, Defendant and Respondent.	D052431 (Super. Ct. No. GIS22609)

APPEAL from a judgment of the Superior Court of San Diego County, William S. Cannon, Judge. Affirmed.

In this action for wrongful termination in violation of public policy, Jack Gechter, formerly a land surveyor for the City of Chula Vista (the City), appeals from a grant of summary judgment in favor of the City.

On appeal, Gechter contends the court erred in granting summary judgment because there are triable issues of fact as to whether (1) he voluntarily resigned or was fired from his position; and (2) he was fired in violation of public policy (a) because he

complained about the City's violation of the Professional Land Surveyors' Act, Business and Professions Code[1] section 8700 (the PLS Act); (b) of his disability; (c) because of his age; (d) because of associational discrimination; and (e) because he exercised his rights under the California Family Rights Act, Government Code section 12945.2 (the CFRA). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Gechter's Employment with the City*

Gechter began working for the City in 1979. From 2000 to 2005, Gechter worked as a land surveyor. In June 2005, the time of his separation from the City, Gechter was 56 years old.

From approximately 1998 to 2003, Gechter's supervisor was Peter Ehlert. In or around August 2002 a coworker named James Pinkney filed an administrative complaint alleging Ehlert subjected Pinkney to discrimination and a hostile work environment because of his race. According to Gechter, he expressed support for Pinkney in a staff meeting and drafted certain documents, which he gave to Pinkney. In May 2003, following an investigation into Pinkney's administrative complaint, Ehlert was separated from his employment with the City. According to Gechter, Ehlert was a "sick man," felt that working under him was a "real nightmare," and viewed Ehlert's separation as a significant victory.

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1 All further statutory references are to the Business and Professions Code unless otherwise specified.

When questioned as to what factual basis he had to allege he was terminated in retaliation for his assistance to Pinkney, Gechter admitted he had no such evidence and only had a "gut feeling" about that. Moreover, in the two-year span between the time Ehlert left and Gechter separated his employment with the City, none of Gechter's supervisors mentioned the Pinkney matter.

After Ehlert left the City, Gechter began working under the supervision of a licensed land surveyor named Jose Gomez. Gechter enjoyed working with Gomez and characterized him as a "very talented and gifted person" and "a real good [q]uarterback." While working under Gomez, Gechter worked in a field office located on Maxwell Street, and his position involved a combination of field work and office work. Gechter liked his cubicle and felt that his working environment was pleasant and friendly.

B. *Restructuring of Surveying Department*

At a meeting in November 2004 Gechter and the other employees in the surveying department were told there was going to be a restructuring of the department in early February 2005, at which time the surveying department would be split up, and Gechter and Archie Lee would be reassigned to work in the real property department of the City's downtown office. The reason for the restructuring, among others, was to allow land surveyors and engineers working on the same project to be in the same building. Gechter stated at the meeting he opposed the reassignment because he felt that he and Lee would not be working under the direct supervision of a licensed surveyor, as required by the PLS Act.

In response, the City informed Gechter and his fellow surveyors that although the City's real property manager Rick Ryals would supervise the nontechnical aspects of Gechter and Lee's work, the city engineer, Sohaib "Alex" Al-Agha, a licensed land surveyor, would supervise all of their survey-related work.

Gechter told a number of people he wanted to continue working in the Maxwell Street office.

Gechter again objected at a meeting in January concerning the legality of the restructuring. In response, Al-Agha told him the city attorney's office had looked into the issue and determined that the reporting structure was legal.

C. *Gechter Takes Stress Leave*

Gechter was scheduled to report to the real property department on February 9, 2005. Shortly before he was to report, Ryals had a "kick-off" breakfast meeting for Gechter and Lee to allow the work team to become acquainted in a relatively relaxed manner. On February 8, the day before Gechter was to report, he asked to meet with Jack Griffin, the director of general services, to discuss his opposition to the restructuring. At the meeting, Gechter felt "confused" and told Griffin he was "too emotional," "very stressed out," and "just wasn't ready for [the reassignment]." Griffin expressed concern about Gechter's health and encouraged him to obtain a note from his doctor in support of a leave of absence, if one were necessary.

On February 9, 2005, Gechter wrote a memorandum to Griffin reiterating his objections to his assigned reporting structure and requested that he be allowed to continue working under Gomez. Gechter's memorandum also indicated that, in the meantime, he

would be placing himself on "temporary stress leave." On February 10, 2005, Gechter submitted a doctor's note to the City, which stated he was "ill and should remain home until February 21, 2005." In response, the City sent Gechter a letter regarding workers' compensation and another letter regarding his rights with respect to family/medical leave. On February 20, 2005, Gechter submitted a workers' compensation claim form. On the form Gechter stated his belief the assigned reporting structure violated the law and indicated that he was suffering from a "mental illness due to new work environment."

D. *Gechter Returns* "*Under Duress*"

On February 21, 2005, Gechter reported to work in the real property department "under duress." Gechter met with Al-Agha and reasserted his belief the new reporting structure violated the PLS Act. In response, Al-Agha reminded Gechter the city attorney's office had already concluded the reporting structure was legal, and thus the issue had been resolved.

Thereafter, Gechter submitted a memorandum to Al-Agha, reasserting his belief that his assigned reporting structure was unlawful, stating he missed doing field work under Gomez's supervision and informing him working fulltime in the office had been a "major adjustment" for him. In response, Al-Agha, whose office was a few steps from Gechter's new cubicle, informed Gechter he could obtain survey-related supervision from Al-Agha at any time by directly coming to see him in his office and that Gechter did not

have to see Ryals first.[2] Al-Agha also offered to attend a followup meeting to assist Gechter whenever Gechter was unable to handle meetings and other work situations on his own.

In April 2005 the City authorized Gechter to be absent for a week on vacation time to take the land surveyor's examination, even though he had failed the test approximately nine times. On April 18, 2005, Gechter sent an e-mail to Al-Agha and Ryals again complaining about the assigned reporting structure. Gechter's e-mail also stated that he had been discussing his complaints with professionals and organizations outside of the City government. In response, Ryals met with Gechter and reiterated the fact the City had already resolved the issue. Ryals also explained to Gechter that his discussions of the City's internal affairs with non-City personnel were inappropriate and served to undermine the City's credibility and image. Ryals also instructed Gechter to refrain from inappropriate conduct of that nature in the future.

Gechter contacted an attorney for his union and relayed his belief that his assigned reporting structure was illegal. In response, the attorney, Nancy Watson, told him she agreed with the City's position and that the issue was not a "big deal." Gechter continued to believe, however, he "might change somebody's mind some day."

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[2] In opposition to the City's motion for summary judgment, Gechter stated his conclusion that Al-Agha was not available to him, but the court sustained the City's objection to that statement. Gechter does challenge the court's evidentiary rulings on appeal.

On April 28, 2005, Gechter e-mailed Dawn Beintema, in the City's human resources department, regarding a job opening announcement for a senior civil engineer position with the City. He also sent the e-mail to at least two people outside the City. The e-mail stated that the City did not need another senior engineer. Rather, Gechter told her, the City needed another senior land surveyor, and he recommended Gomez for that position. The e-mail also stated, "It is very frustrating for me and my land surveying co-workers that decisions that affect us are made without asking us what we think about the subject."

On May 12, 2005, Gechter by e-mail complained yet again to Al-Agha and Ryals about his assigned reporting structure. The e-mail also stated that he had contacted two other public agencies regarding this issue.

E. *Written Reprimand*

On May 17, 2005, Ryals issued a written reprimand to Gechter for insubordination. The written reprimand described Gechter's "blatant refusal to conform to the new organizational structure and accept direction" and stated that Gechter had violated certain of the City's civil service rules, including conduct causing discredit to the City, violation of an order/failure to obey any lawful and reasonable direction of a superior, and, insubordination.

Gechter refused to sign the reprimand and instead informed Al-Agha and Ryals that he was leaving the office immediately and putting himself on another "stress leave." Gechter left work without permission later that day.

F. *Gechter's Separation from the City*

On May 20, 2005, Ryals informed Gechter, by letter and telephone, that the City would separate him from his employment on the grounds of job abandonment if he failed to return to work by May 23. Ryals also sent Gechter six blank leave slips and told him to complete and return them by Thursday of every week that he was unable to work.

The City also sent Gechter another set of letters regarding workers' compensation and family/medical leave. The letter regarding family/medical leave informed Gechter he had to return the necessary documentation by June 7, 2005, and Gechter understood that was his deadline to return any paperwork for any type of leave. The City also informed him of its employee assistance program, as a result of which Gechter received free psychological counseling. Gechter considered himself healthy enough to work from home.

Instead of reporting back to work, Gechter submitted a doctor's note, which the City received on May 23, 2005. The note, dated May 20, 2005, stated that Gechter was experiencing "substantial job stress" and that "a return to work on May 23 would adversely affect his health." However, that note did not say Gechter could not return to work on some other date or that he had any work-related restrictions. Nonetheless, in light of the note, the City decided not to send a letter it had already drafted separating Gechter's employment based on job abandonment.

On May 26, 2005, Ryals's assistant e-mailed Gechter to ask him what type of leave he intended to use to cover his absences to date. Gechter responded that he planned to

use sick leave and that he would "fill out a new leave slip for the May 17-26 time period for 59 Hours-sick leave [and] mail it to you ASAP."

As of noon on June 8, however, the appropriate city personnel (Ryals, Al-Agha or the human resources department) had still not received any documentation from Gechter to justify his continued absence. As a result, the City sent Gechter a letter informing him that he had been separated from his position with the City by operation of City Civil Service rule 1.09(c), which states that the "[f]ailure of an employee to report at the expiration of his leave of absence shall separate the employee from the service and be considered, in effect, a resignation."

Gechter had mailed the City a package of materials on or after June 6, 2005. However, instead of sending the packet to the correct individuals (the human resources department or his supervisors Ryals and Al-Agha), Gechter directed it to the city manager, David Rowlands. Although the City received the package, none of the appropriate individuals knew of its contents until after Gechter's separation letter had been mailed.

Further, the package did not contain a leave slip for absences after May 27 and did not provide any excuse for his absence thereafter. Gechter also did not apply for leave under the CFRA or its federal counterpart. Although Gechter provided a new doctor's note dated May 27, 2005, it did not state he could not return to work and instead only requested he be allowed to go back to his old reporting structure. In his letter to the city manager, Gechter did not offer to return to work under the current structure. Rather, he told the city manager he refused to return "under the current work environment/structure

in the newly created Real Property Section, which is clearly in violation of the State of California Land Surveyors Act and causing all my stress."

G. *Gechter Sues City for Wrongful Termination*

Gechter sued the City for wrongful termination in violation of public policy, disability discrimination, age discrimination, retaliation/associational discrimination and for violation of CFRA. The court sustained the City's demurrer without leave to amend to the claims for disability discrimination, age discrimination and for violation of the CFRA, on the basis Gechter had failed to exhaust his administrative remedies as to those claims.

H. *City's Motion for Summary Judgment*

The City moved for summary judgment or, in the alternative, summary adjudication of Gechter's two remaining claims for wrongful termination in violation of public policy and for retaliation/associational discrimination. In the motion, the City argued (1) Gechter abandoned his employment; (2) there was no constructive discharge; (3) the City's alleged violation of the PLS Act did not support a claim for termination in violation of public policy; and (4) Gechter could not show the City's conduct violated the PLS Act or any prohibitions contained in FEHA.

The court granted the City's motion for summary judgment. In doing so the court found (1) there was no discharge because Gechter abandoned his employment; (2) there was no triable issue of fact as to constructive discharge; and (3) he could not raise a triable issue of fact on his claims of wrongful termination and retaliation. In addition, the court granted several objections the City interposed to Gechter's evidence, including

(1) Gechter's opinion about the legality of his supervision; (2) his opinion there was a "hostile work environment"; (3) his opinion he was terminated; and (4) his speculation as to the City's motive in "terminating" him.

This timely appeal followed.

DISCUSSION

I. *STANDARDS GOVERNING SUMMARY JUDGMENT MOTIONS*

"Summary judgment is granted when a moving party establishes the right to the entry of judgment as a matter of law. [Citation.] On appeal, the reviewing court makes "'an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law. [Citations.]'" [Citation.]" (*Hesperia Citizens for Responsible Development v. City of Hesperia* (2007) 151 Cal.App.4th 653, 658.)

In independently examining the record on appeal "to determine whether triable issues of material fact exist," we "'consider[] all the evidence set forth in the moving and opposition papers except that to which objections were made and sustained.' [Citations.]" (*Ambriz v. Kelegian* (2007) 146 Cal.App.4th 1519, 1530.) Further, "'we must view the evidence in a light favorable to plaintiff as the losing party [citation], liberally construing [the plaintiff's] evidentiary submission while strictly scrutinizing the defendants' own showing, and resolving any evidentiary doubts or ambiguities in plaintiff's favor.' [Citation.]" (*Ibid*.)

"'In the summary judgment context, . . . the evidence must be incapable of supporting a judgment for the losing party in order to validate the summary judgment.'" (*Faust v. California Portland Cement Co.* (2007) 150 Cal.App.4th 864, 877.) "'Thus even though it may appear that a trial court took a "reasonable" view of the evidence, a summary judgment cannot properly be affirmed unless a contrary view would be unreasonable as a matter of law in the circumstances presented.' [Citation.]" (*Ibid*.)

II. *ABANDONMENT OF JOB*

Gechter asserts the court erred in determining he resigned his position as opposed to being terminated. This contention is unavailing.

One necessary element of a wrongful discharge claim is that the employee was discharged by the employer, as opposed to having voluntarily resigned. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1244-1245 (*Turner*), overruled on another point in *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 498.)

The City's Civil Service rule 1.09(c) provides: "Failure of an employee to report at the expiration of his leave of absence shall separate the employee from the service and be considered, in effect, a resignation."

Without citation to any authority, Gechter contends the fact he mailed the necessary paperwork to City Manager Rowlands compels the conclusion he did not resign, but was terminated. However, this argument fails for several reasons.

First, Gechter cites no evidence or authority that the city manager was the appropriate person to contact, as opposed to the human resources department or his supervisor. Those are the individuals with whom he was in contact regarding his absence

from work and the City's demand that he return to work or provide adequate documentation supporting his leave. The undisputed evidence submitted by the City shows the city manager was not the proper person to receive the documents.

Second, the documents were not timely. Because he mailed the documents and sent them to the city manager, neither his supervisor nor the human resources department received the documents or had knowledge of them before the separation letter was sent out.

Third, the documents were insufficient to justify his continued absence. The May 23 doctor's note does not indicate he was required to be off work at any time past May 23, nor whether he could work with some accommodations. The May 27 note did not state he could not return to work and was only a request he be allowed to go back to his old reporting structure. Most important, he did not unequivocally offer to return to work. Rather, he told the city manager he refused to return "under the current work environment/structure in the newly created Real Property Section, which is clearly in violation of the State of California Land Surveyors Act."

In sum, the City had ample cause to find Gechter had abandoned his position, and the court did not err in granting summary judgment as to the wrongful termination cause of action.

III. *CONSTRUCTIVE TERMINATION*

Even if Gechter resigned, he still would be able to sue for wrongful termination if he could show that he was subjected to a "constructive discharge." "Constructive discharge occurs when the employer's conduct effectively forces an employee to resign."

(*Turner, supra,* 7 Cal.4th at p. 1244.) Although the employee resigns, the employment relationship is actually severed involuntarily by the employer's acts. Thus, a constructive discharge is legally regarded as a firing rather than a resignation. (*Id.* at pp. 1244-1245.) To prove a constructive discharge, the employee must plead and prove that the employer either intentionally created or knowingly permitted working conditions that were so intolerable at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would have to resign. (*Id.* at p. 1251.)

However, """Every job has its frustrations, challenges, and disappointments; these inhere in the nature of work.""" (*Turner, supra*, 7 Cal.4th at p. 1247.) An employee """is not . . . guaranteed a working environment free of stress.""" (*Ibid.*) "Under *Turner,* the proper focus is on the working conditions themselves, not on the plaintiff's *subjective* reaction to those conditions." (*Gibson v. Aro Corp.* (1995) 32 Cal.App.4th 1628, 1636.) "[A]n employee is not permitted to quit and sue simply because he or she does not like a new job assignment." (*Id.* at p. 1637.)

In this case Gechter cannot show he was the subject of a constructive termination. He has produced no evidence that the restructuring created an environment that was so intolerable as to force him to resign. His subjective complaints about stress caused by his reassignment are insufficient to support such a conclusion. His complaints about the alleged illegality of the new reporting structure also cannot demonstrate an objectively intolerable working environment. Although Gechter submits evidence about the alleged stress he suffered as a result of the City's actions, he has submitted no objective evidence

that the alleged working conditions themselves were to blame, as opposed to his subjective belief they violated the law.

IV. *TERMINATION IN VIOLATION OF PUBLIC POLICY*

Even if Gechter could demonstrate that he did not resign, but was terminated by the City, he has raised no triable issue of fact that such termination was in violation of public policy.

The tort of wrongful termination in violation of public policy is an exception to the rule that an at-will employee may be terminated for no reason or for a reason that is arbitrary or irrational. (*Silo v. CHW Medical Foundation* (2002) 27 Cal.4th 1097, 1104.) Typically, the tort arises in circumstances where the employer retaliates against an employee who (1) refused to violate a statute; (1) performed a statutory obligation; (3) exercised a statutory right or privilege; or (4) reported an alleged violation of a statute of public importance. (*Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1090-1091 (*Gant*), overruled on another point in *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 80, fn. 6 (*Green*).)

Because the concept of a "public policy" defies precise definition and courts are loath to venture into this arena to avoid judicial policymaking, the policies encompassed by the exception have been limited to those which are "carefully tethered to fundamental policies that are delineated in constitutional or statutory provisions . . . ." (*Gantt, supra,* 1 Cal.4th at p. 1095.) Administrative regulations may also serve as a fundamental public policy touchstone where they are promulgated under and support important policies delineated in the enabling statute, and the regulations themselves inure to the benefit of

the public and advance a fundamental policy interest. (*Green, supra,* 19 Cal.4th at pp. 84-85.)\

In *Sequoia Ins. Co. v. Superior Court* (1993) 13 Cal.App.4th 1472, 1480, the Court of Appeal explained: "A requirement that a policy be 'delineated' [in a statute or constitutional provision] entails more specificity than merely being 'derived from' or 'based' on its source. To 'delineate' means ' . . . to describe in detail, esp. with sharpness or vividness' [citation]; ' . . . to describe, portray, or set forth with accuracy or in detail' [citation]." Because employers are deemed to have knowledge of the fundamental public policies expressed in state and federal Constitutions and statutes, the constraint of delineation in a given provision ensures that employers are on notice of the policies which, if contravened in discharging an employee, will subject them to tort liability. (*Silo v. CHW Medical Foundation, supra,* 27 Cal.4th at p. 1104.) And, although the employer's precise wrongful act, such as firing an employee for refusing to commit a crime, need not be specifically prohibited in order for the public policy exception to apply, the provision in question must sufficiently describe the kind of conduct that is prohibited to enable an employer to know the fundamental public policies that are expressed in that particular law. (*Turner, supra,* 7 Cal.4th at p. 1256, fn. 9; *Sequoia Ins. Co., supra,* 13 Cal.App.4th at p. 1480.)

The "public" aspect of the "public policy" exception means that the policy at issue must affect our society at large, not just "a purely personal or proprietary interest of the plaintiff or employer . . . ." (*Gantt, supra,* 1 Cal.4th at p. 1090.) For example, in *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, the plaintiff employee asserted he was fired

because he reported to upper management that his supervisor was under investigation for embezzlement from another company. Further, he charged that the firing was in derogation of the public policy imposing a duty on an employee to disclose information pertinent to the employer's business interests. This policy impacted only the employer's private interests, not the greater public interest, and the plaintiff could state no public policy claim. (*Id.* at pp. 664, 669-671.) So, too, allegations that an employee had been discharged after complaining that the company was not following its own internal policies and collective bargaining agreements did not implicate a fundamental policy enshrined in a statutory or constitutional provision: "The tort of wrongful discharge is not a vehicle for enforcement of an employer's internal policies or the provisions of its agreements with others." (*Turner, supra,* 7 Cal.4th at p. 1257.)

Finally, the policy must be well established at the time of the employee's discharge and must be fundamental and substantial. (*Gantt, supra,* 1 Cal.4th at p. 1090; *Green, supra,* 19 Cal.4th at p. 76.) Similarities, if any, between the policy in question and other policies declared to be substantial and fundamental will be a significant factor in deciding whether a given public policy is substantial and fundamental. (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 895-896.) So, too, broad, consistent and abiding legislative and statutory support can support an inference that the policy has substantial and enduring value. (*Id.* at p. 896; *Sullivan v. Delta Air Lines, Inc.* (1997) 58 Cal.App.4th 938, 944.)

A. *Complaints About Alleged Violations of the PLS Act*

Section 8726, subdivision (n), provides in part: "Any department or agency of the state or any city, county, or city and county that has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until the person currently in responsible charge is replaced. [¶] *The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying*." (Italics added.)

1. *No fundamental public policy at issue*

Although section 8726, subdivision (n) could, in the abstract, arguably be designed to protect the public from unlicensed surveyors, it does not constitute a fundamental public policy in the context of this action. Gechter asserts that he complained about a restructuring where his immediate supervisor was not a licensed surveyor. However, he has not submitted any evidence that he reported any actual failure of a licensed surveyor to "review, approve or examine" any survey work. Rather, he was complaining about an internal, administrative reporting relationship, i.e., his personal unhappiness with having to work in the real property division of the City. Such internal employment practices, and Gechter's complaints about them, does not implicate a fundamental public policy. Rather, they only implicate "a purely personal or proprietary interest of the plaintiff or employer." (*Gantt, supra,* 1 Cal.4th at p. 1090.)

2. *No retaliation in violation of public policy*

Assuming that Gechter could demonstrate that section 8726, subdivision (n) stated a fundamental public policy, he failed to raise a triable issue of fact that he was fired in violation of that public policy. In order to state such a claim, Gechter was required to show (1) he reasonably believed he was engaging in protected activity when he complained about the legality of the reporting structure; (2) he suffered an adverse employment action; and (3) there was a causal nexus between his protected activity and the adverse action. (*Fisher v. San Pedro Peninsula Hospital* (1994) 214 Cal.App.3d 590, 614.)

In this case, Gechter's belief that his assigned reporting structure was in violation of the PLS Act was unreasonable. The City repeatedly informed him that the structure was lawful, as confirmed by a city attorney opinion. Gechter's union attorney agreed with that opinion. Moreover, although his immediate supervisor was not a licensed surveyor, his new cubicle was steps away from Al-Agha's office, and Al-Agha informed him he would be supervising the technical aspects of his work. Gechter does not dispute the fact that Al-Agha told him he could speak with him at any time without going through Ryals first.

Gechter has also failed to raise a triable issue of material fact as there was no causal nexus between his termination and Gechter's complaints about the PLS Act. The City had a legitimate, nonretaliatory reason for Gechter's termination. The City reasonably concluded Gechter refused to return to work and failed to timely provide documentation to support his continued absence.

B. *Disability Discrimination*

To establish a prima facie case that the City discriminated against him based upon a disability, Gechter was required to show (1) he suffered from a disability; (2) he was competently performing his duties; and (3) he suffered an adverse employment action because of his disability. (*Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 236.) Further, an employee must also show the employer knew of the disability in order to show the adverse employment action was "because of" the disability. (*Ibid.*)

Gechter has submitted no evidence that he was disabled. None of his doctor's notes stated so, or that he was unable to return to work, or that he could only work with certain restrictions. The fact he was suffering from "stress" does not meet the definition of a disability. Further, Gechter has submitted no evidence that the City was put on notice of a disability. The fact Gechter took leave because of stress was an insufficient showing. (*Brundage v. Hahn, supra*, 57 Cal.App.4th at p. 237 [evidence showing plaintiff had taken substantial amount of leave insufficient to show knowledge of disability]; *Miller v. National Cas. Co.* (8th Cir. 1995) 61 F.3d 627, 629-630 [absenteeism and claims of stress insufficient].)

C. *Age Discrimination*

As with his claim of disability discrimination, Gechter cannot raise a triable issue of fact that he was terminated because of his age as he has produced no evidence to support this claim. Rather, he testified in his deposition that his belief he was discriminated because of his age was just a "gut feeling." In opposition to the City's motion for summary judgment, and on appeal, Gechter points to no evidence, whether

direct or circumstantial, from which a jury could infer he was terminated because of his age.

D. *Associational Discrimination*

Gechter points out he supported another employee's racial discrimination complaint, approximately 18 months before his separation from the City. However, Gechter admits he has no evidence of a causal connection between that incident and the termination of his employment. In opposition to the City's motion for summary judgment, and on appeal, Gechter points to no evidence, direct or circumstantial, that his support of a co-employee was in any way connected to his separation.

E. *CFRA-Related Discrimination*

The elements of a claim for retaliation in violation of the CFRA are "(1) the defendant was an employer covered by the CFRA; (2) the plaintiff was an employee eligible to take CFRA leave; (3) the plaintiff exercised [his or her] right to take leave for a qualifying CFRA purpose; and (4) the plaintiff suffered an adverse employment action . . . " because of his or her exercise of CFRA leave rights. (*Dudley v. Department of Transportation* (2001) 90 Cal.App.4th 255, 261.)

Gechter cannot raise a triable issue of material fact on this claim as Gechter admitted that he never applied for or took CFRA leave. Thus, there could be no retaliation claim based upon the CFRA.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

McINTYRE, J.